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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,951	10/26/2001	Majid Syed	708034-605-003	7289
7590	12/13/2005		EXAMINER DINH, DUNG C	
Blaney Harper Jones, Day, Reavis & Pogue 51 Louisiana Avenue, NW Washington, DC 20001			ART UNIT	PAPER NUMBER
			2152	
DATE MAILED: 12/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/032,951

Applicant(s)

SYED, MAJID

Examiner

Dung Dinh

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/10/03 3/5/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

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**DETAILED ACTION**

**Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claim 46 is rejected under 35 U.S.C § 101 because the claimed invention is directed to non-statutory subject matter.**

Claim 46 claims an abstract idea per se. Claim 45 is directed at a business model. A model is a tentative description of a theory or system. (Webster's University Dictionary). A model is merely an abstract idea or at best a descriptive material. Hence, claim 46 does not fall within any of the four statutory subject matters set forth in 35 U.S.C 101 - product, process, manufacture, or composition of matter.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

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Claims 1-3, 5-16, 17, 19-31, 32-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman et al. US patent 5,978,381 and further in view of Wu et al. US publication 2002/0198963.

As per claim 1, Perlman teaches a system comprising:  
a gateway receiving and intelligently broadcasting digital content (col.10 lines 27-64 - multicast server);

the gateway comprises:

a scheduler receiving data content (apparent from col.10 lines 47-55), separating the data content into a first and second types (col.13 lines 45-55, high bandwidth content and updates);

scheduling broadcast of the first type of data content to the client device during selective first broadcast period (apparent from col.10 lines 47-55);

scheduling broadcast of said second type of data content to the client during a second broadcast time period (col.13 lines 45-55);

the client device recombine the first and second content (inherent to form the complete content).

Perlman does not specifically disclose schedule a time period to enable use of the data content. In similar filed of data downloading, Wu teaches a method to enable a user to schedule a

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time to automatic rendered downloaded content (see abstract, [0145]-[0150]). It would have been obvious for one of ordinary skill in the art to combine the teaching of Wu with Pearlman because it would have reduces user frustration by enabling the system to automatically render the content at a scheduled time. (See Wu [0012], [0022], [0034], [0041]).

As per claim 2, Perlman teaches the first content requires high bandwidth (col.2 lines 50-55) and the second content requires relatively lower bandwidth (col.13 lines 50-55, it is apparent that updates data would requires lower bandwidth than the entire content).

As per claim 3, Pearlman teaches activating includes receiving an enable flag at the client (col.13 lines 14-24 when payment is made).

As per claim 5, Perlman teaches the first data content comprises: images and graphic [col.11 lines 10-13], song [audio], and digital data purchase [col.13 lines 14-24 - pay content].

As per claim 6, Perlman teaches the second data content comprises: accompanying text, fixed data [col.13 lines 50-55 updates] and data to complete the first content [col.11 line 34 retransmission].

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As per claim 7, Perlman teaches the first content is broadcast during low usage period (col.2 lines 50-55 -off peak hour).

As per claim 8, Perlman teaches the second content is received during client usage period (col.13 lines 45-55).

As per claim 9, Perlman teaches the first content is broadcast during low usage period (col.2 lines 50-55 -off peak hour) and the second content is received during client usage period (col.13 lines 45-55).

As per claim 10, Perlman teaches the first content is broadcast before the second content (apparent from col.13 lines 45-55).

As per claims 11-13, Perlman teaches the content is broadcast with deactivate flag so that it is stored but not immediate use (col.13 lines 14-24 - Condition viewing restriction until fee is paid. It is apparent that an activation flag would be send after the client pay to activate the content for viewing.)

As per claim 14-15, Pearlman does not specifically disclose the client device being a digital radio, handheld devices, etc. The type of client device used would have been a matter of choice and would have been an obvious variation from the teaching of Pearlman. It would have been obvious to apply Pearlman teaching as modified to portable client device such as digital radio,

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handheld devices, wireless telephone, etc. because it would have enable the user to have access to high bandwidth content on the go.

As per claim 16, Pearlman teaches the data originated from Internet and web site (col.9 lines 49-68), advertiser and ISP (col.8 lines 45-65).

As per claims 17, 19-31, they are rejected under similar rationales as for claims 1-3, 5-16 above. It is apparent that Pearlman would have had an activation message to the client device (col.13 lines 14-25 - after a client pays a fee to view the content).

As per claim 32, Perlman teaches a method for dynamic scheduling of broadcast content for client devices, the method comprising:

receiving first data content from a digital broadcast source (col.20 lines 27-47);

storing in local storage said first data content (col.11 lines 5-10, downloading into caching store 220);

receiving a second data content comprising: missing data, new data and changes (col.10 lines 55-63 - new data which has not been

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previously downloaded, col.11 lines 34 - retransmission, col.13 lines 50-55 - updates to data downloaded previously);

combining associated first and second data (inherently updated data and missing data would be combined with previous data to form a complete content).

Perlman does not specifically disclose schedule a time period to activate the data content. In similar filed of data downloading, Wu teaches a method to enable a user to schedule a time to automatic rendered downloaded content (see abstract, [0145]-[0150]. It would have been obvious for one of ordinary skill in the art to combine the teaching of Wu with Pearlman because it would have reduces user frustration by enabling the system to automatically render the content at a scheduled time. (See Wu [0012], [0022], [0034], [0041]).

As per claim 33, Perlman teaches the first content requires high bandwidth (col.2 lines 50-55) and the second content requires relatively lower bandwidth (col.13 lines 50-55, it is apparent that updates data would requires lower bandwidth than the entire content).

As per claim 34, Perlman teaches the first data content comprises: images and graphic [col.11 lines 10-13], song [audio], and digital data purchase [col.13 lines 14-24 - pay content].



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As per claim 35, Perlman teaches the second data content comprises: accompanying text, fixed data [col.13 lines 50-55 updates] and data to complete the first content [col.11 line 34 retransmission].

As per claim 36, Perlman teaches the first content is received during low usage period (col.2 lines 50-55 -off peak hour).

As per claim 37, Perlman teaches the second content is received during client usage period (col.13 lines 45-55).

As per claim 38, Perlman teaches the first content is received during low usage period (col.2 lines 50-55 -off peak hour) and the second content is received during client usage period (col.13 lines 45-55).

As per claim 39, Perlman teaches the first content is received before the second content (apparent from col.13 lines 45-55).

As per claims 40-41, Perlman teaches the content is stored with non-enable flag so that it is stored but not immediate use (col.13 lines 14-24 - Condition viewing restriction until fee is paid).

As per claim 42, Pearlman teaches activating includes receiving an enable flag at the client (col.13 lines 14-24 when payment is made).

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As per claims 43-44, Perlman does not specifically disclose the client device being a digital radio, handheld devices, etc. The type of client device used would have been a matter of choice and would have been an obvious variation from the teaching of Pearlman. It would have been obvious to apply Pearlman teaching as modified to portable client device such as digital radio, handheld devices, wireless telephone, etc. because it would have enable the user to have access to high bandwidth content on the go.

As per claim 45, Perlman teaches the data originated from Internet and web site (col.9 lines 49-68), advertiser and ISP (col.8 lines 45-65).

**Claims 4 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlman and Wu and further in view of Sampath et al. US patent 6,266,774.**

As per claim 4, Perlman does not teach providing a time-to-live value the specifies a time interval that upon expiration, the client device deleting at least a part of the recombined data. Perlman teaches providing content on a trial basis (col.13 lines 20-23). It is well known in the art to have expiration time period on trial content (see Sampath col.1 lines 30-50). Manually removing expired content is a chore on the

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user (Sampath col.1 lines 30-50). Hence, it would have been obvious for one of ordinary skill in the art to cause the client device to delete content that is not activated after a time-to-live period because it would have permitted the system to automatically clean up and reduces wasted storage space on the client device.

As per claim 18, it is rejected under similar rationale as for claim 4 above.

#### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (571) 272-3943. The examiner can normally be reached on Monday-Friday from 7:00 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (571) 272-3949.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dung Dinh  
Primary Examiner  
December 6, 2005